1819

SUPREME COURT OF THE UNITED STATES.

No. 44.

JOHN BELL, PLAINTIFF IN ERROR,

vs.

COLUMBUS C. AND SAM'L R. HEARNE, AND SAM'L H. DOCKERY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

INDEX.

	Original.	Print.
Petition	1	1
Patent—Part of petition	2	2
Citation for C. C. Hearne	4	2
Sheriff's return	4	3
Citation to S. R. Hearne	5	3
Sheriff's return	5	3
Citation for Samuel H. Dockery	5	3
Sheriff's return	6	4
Order of court—Default	6	4
Order of court—Continued	7	4
Order of court—Answer filed	7	4
Answer	7	5
Deed of Hearne to Dockery—Part of answer	9	5
Order of court—Answer of Hearne filed	10	6
Answer of Hearne calling Howell in warranty	11	7
Order of court—continuance	12	7
Citation to John N. Howell	12	8
Sheriff's return	13	8
Order of court—Continuance	13	8
Answer of Hearne to call in warranty	13	8
Answer of Howell and heirs of Lewis	13	9
Answer of Robert Smith	14	9
Trial—Plaintiff's evidence—Patent admission	15	10
R. T. Noel's evidence	15	10
J. B. Thompson's evidence	16	10

GIDEON, Print.

	Original.	Print.
A. Currie's evidence	16	11
Testimony of Wm. Ledbetter	17	11
Testimony of Roland Jones, (for defendants)	19	12
Sheriff's sale to Robert Smith	29	19
Act of sale from Robert Smith	32	20
Judgment and fi. fa. in suit of St. John Fabre vs. James Bell	34	21
Sheriff's return	35	22
Judgment of Fabre vs. James Bell	37	23
Crain's testimony	38	23
W. Hacket's testimony	38	24
Act of sale from Lewis & Howell to Hearne	38	24
Sale of Hearne to Dockery	42	26
Bill of exceptions	44	27
Judgment	45	28
Motion for a new trial	46	28
Motion for an appeal	46	28
Order for an appeal	47	29
Appeal bond	47	29
Opinion and decree of supreme court	50	30
Application for writ of error	55	32
Order granting writ of error	57	34
Writ of error	57	34
Bond for writ of error	59	34
Citation	60	35
Acknowledgment of service	61	36
Clerk's certificate	61	36

STATE OF LOUISIANA,
Parish of Caddo.

In the District Court.

Be it remembered, that on the 16th day of August, 1853, John Bell, by his attorney, R. G. Harper and John W. Burton, filed with the clerk of the district court, in and for the parish of Caddo, State of Louisiana, his petition, in words and figures following, to wit:

Petition.

To the Hon. the Judge of the eighteenth judicial of the State of Louisiana, in and for the parish of Caddo.

The petition of John Bell, a resident of the city of Nashville, in the State of Tennessee, with respect represents, that he is the true and legal owner of a certain tract or parcel of land, situated and being in the parish of Caddo, State of Louisiana, known and described as follows, to wit: the west half and the southeast quarter of section 9, in township eighteen (18,) range sixteen (16,) in the district of lands subject to sale at Natchitoches, in the State of Louisiana, containing four hundred and seventy-eight and $\frac{80}{100}$ acres, worth three thousand dollars. Petitioner further represents, that he derived title to said land from the Government of the United States of America, by a patent emanating from said Government, dated twenty-second (22) of June, eighteen hundred and fifty, (1850,) signed by Z. Taylor, President of the United States, and Thomas Ewing, jr., Sec'y, which will more fully appear by reference to said patent, which is annexed and made a part of this petition. Your petitioner avers that Columbus C. Hearne, a resident of the State of Texas, and Samuel H. Dockery and Samuel R. Hearne, both residents of the parish of Caddo, State of Louisiana, have taken unlawful possession of the aforesaid land, and refused, and still refuses to give it up, although amicably demanded so to do. Your petitioner further avers, that the said party defendants, by refusing to deliver to him possession of said land, and keeping possession of the same, has injured him in the sum of one thousand dollars. The foregoing being true, your petitioner prays that a curator ad hoc be appointed to represent the absent defendants, Columbus C. Hearne, and that the other defendant, Samuel R. Hearne and Samuel H. Dockery, be cited in due course of law to answer this petition. Your petitioner further prays, that he be decreed the rightful and legal owner of the land described in this petition, and that the said party defendants be condemned by the judgment of the court to pay him the sum of one thousand dollars damages, and to deliver possession of said land to him; and further prays for general relief in the premises.

JOHN W. BURTON &
R. G. HARPER,
Attorneys for Plaintiff.

[REC. XLIV, D. T., 1856.]—1

Patent—Part of Petition.

[Certificate No. 1270.]

The United States of America, to all whom these presents shall come, greeting:

Whereas, John Bell, of Nashville, Tennessee, has deposited in the General Land Office of the United States a certificate of the register of the land office at Natchitoches, whereby it appears that full payment has been made by the said John Bell, according to the provisions of the act of Congress of the 24th of April, 1820, entitled an act making further provisions for the sale of public lands, for the west half and the southeast quarter of section nine, in township eighteen, of range sixteen, in the district of lands subject to sale at Natchitoches, Louisiana, containing four hundred and seventy-eight acres and eighty-nine hundredths of an acre, according to the official plat of the survey of the said lands, returned to the General Land Office by the surveyor general, which said tract has been purchased by the said John Bell:

Now know ye, that the United States of America, in consideration of the premises and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said John Bell and to his heirs, the said tract above described: to have and to hold the same, together with all the rights, privileges, immunities and appurtenances of whatsoever nature thereunto belonging, unto the said John Bell, and to his heirs and assigns, forever.

In testimony whereof, I, Zachary Taylor, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed. Given under my hand at the city of Washington, the twenty-second (22) day of June, in the year of our Lord one thousand eight hundred and fifty, and of the independence of the United States the seventy-fourth.

By the President: Z. TAYLOR.

By T. EWING, Jr., *Sec'y.*

N. SARGENT,

Recorder of the General Land Office. [ ]

Recorded, vol. 12, page 173.

Citation for C. C. Hearne.

In the District Court for the 18th judicial district, Parish of Caddo, State of Louisiana.

JOHN BELL
vs. } No. 3567.
C. C. HEARNE et al.

To Columbus C. Hearne, a non-resident of the State of Louisiana:

You are hereby cited to appear in the office of the clerk of said court, in the town of Shreveport, in the parish aforesaid, and comply with

the demand contained in the petition, of which a copy is hereto annexed, or file your answer thereto in writing, in the office of the said clerk, in ten days service hereof, with one additional day for every ten miles between your residence and the office of said clerk.

Witness the honorable H. M. Spofford, judge of the said court, this 16th day of August, one thousand eight hundred and fifty-three.

F. G. FITZPATRICK, *D'y Clerk.*

Sheriff's Return.

Received, August 16th, 1853, and on the twenty-third day of February, 1854, served a copy hereof, together with copy of petition, on C. C. Hearne, personally, in the town of Shreveport, parish of Caddo.

THOMAS R. SIMPSON, *D'y Sheriff.*

Citation to S. R. Hearne.

In the District Court for the 18th judicial district, Parish of Caddo, State of Louisiana.

JOHN BELL
vs.
C. C. HEARNE et al. } No. 3567.

To Samuel R. Hearne, of the Parish of Caddo:

You are hereby cited to appear in the office of the clerk of the said court in the town of Shreveport, in the parish aforesaid, and comply with the demand contained in the petition, of which a copy is hereto annexed, or file your answer thereto in writing, in the office of the said clerk, in ten days after the service of this petition, with one additional for every ten miles between your residence and the office of said clerk.

Witness H. M. Spofford, judge of the said court, this 16th day of August, one thousand eight*een* hundred and fifty-three.

F. G. FITZPATRICK, *D'y Clerk.*

Sheriff's Return.

Received, August 16th, 1853; and on the 16th day of September, 1853, served a copy hereof, together with a copy of petition, on S. R. Hearne, personally, at his domicil, about 20 miles from Shreveport, parish of Caddo.

M. WATSON, *Sh'ff.*

Citation for Sam'l H. Dockery.

In District Court for the 18th judicial district, Parish of Caddo, State of Louisiana.

JOHN BELL
vs.
C. C. HEARNE et al. } No. 3567.

To Samuel H. Dockery, of the Parish of Caddo:

You are hereby cited to appear in the office of the clerk of the said court, in the town of Shreveport, in the parish aforesaid, and comply

with the demand contained in the petition, of which a copy is hereto annexed, or file your answer thereto in writing, in the office of the said clerk, in ten days after the service hereof, with one additional day for every ten miles between your residence and the office of said clerk.

Witness H. M. Spofford, judge of the said court, this 16th day of August, one thousand eight hundred and fifty-three.

F. G. FITZPATRICK,
D'y Clerk.

Sheriff's Return.

Received, August 16th, 1853; and on the 17th day of September, 1853, served a copy of petition on Samuel H. Dockery, at his domicil, in the parish of Caddo, about 25 miles from Shreveport, by handing the same to a free white person over the age of 14 years, who was known to me by the name of A. Dockery, who was residing with the said S. H. Dockery at the time of said service, the said S. H. Dockery at the time being absent.

M. WATSON, *Sheriff.*

And afterwards, to wit, on the 27th day of December, 1853, the following order was entered upon the minutes of the said D. C. court, by the clerk thereof:

Order of Court—Default.

JOHN BELL
vs.
C. C. HEARNE et al. } *Default* vs. *Samuel R. Hearne and Samuel H. Dockery.*

Order of Court—Continued.

And afterwards, to wit, on Jan. 3d, 1854, the following entry was made:

JOHN BELL
vs.
C. C. HEARNE et al. } Continued.

And afterwards, on Jan. 14th, 1854, the following order was made upon the minutes of the court:

Order of Court—Answer filed.

JOHN BELL
vs.
C. C. HEARNE et al.

Answer of Samuel H. Dockery filed, and on motion it is ordered by the court, that L. P. Crain, esq., be appointed curator ad hoc to represent C. C. Hearne, the absent defendant, and he being here in open court accepts said appointment.

1822

Answer.

JOHN BELL
vs.
C. C. HEARNE et al. } No. 3567.

In District Court for the Parish of Caddo.

And now comes the defendant, Samuel H. Dockery, by his attorney, and, for answer to the plaintiff's petition in this behalf, denies all and singular the allegations against him in manner and form as the same *and* therein stated.

This defendant, a respondent, avers, that he purchased with one Alfred Dockery, from Columbus C. Hearne, the northwest quarter of section nine, in township eighteen, of range sixteen, (16,) which is a part of the land claimed by plaintiff, John Bell, and paid the said Hearne four hundred dollars in cash for the same, as fully appears by his deed annexed and made a part of this answer. From this it will fully appear, that this respondent did not take unlawful possession of said land, but entered on the same in good faith and under a fair purchase, and believing himself to have title thereto, and has erected permanent and valuable buildings thereon, by which the value of said land has been and is enhanced to amount of four hundred dollars. This defendant prays, that the said Columbus C. Hearne, his vendor, be required to appear in warranty, and defend the title made to this defendent and respondent against the claim of the plaintiff, John Bell; and to this end, that a curator ad hoc be appointed to represent said Hearne, who is a non-resident of the State of Louisiana, on whom service of citation and this call may be made; and on the trial of this cause, if judgment be rendered against this defendant, he prays for the same judgment against his vendor, C. C. Hearne, and that he be compelled to pay this defendant the said purchase-money four hundred dollars, and legal interest on the same from payment, and also the sum of four hundred dollars for improvements on said land as aforesaid, and all costs, and $1 50 costs of copy of deed; and defendant prays, that the plaintiff, in the event he obtain judgment, be adjudged to pay this defendant the amount of the enhanced value of the land by reason of the permanent improvements erected thereon by defendant, to wit, four hundred dollars; and for general relief.

FORD & SLAUGHTER,
Attorneys for Defendant.

Deed of Hearne to Dockery—Part of answer.

STATE OF LOUISIANA,
Parish of Caddo.

Be it remembered, that this day, before me, William Littlejohn, not. public in and for the parish of Caddo, in the State of Louisiana, duly commissioned and sworn, personally came and appeared Columbus C. Hearne, of this parish, who declared, that, for the consideration of the sum of four hundred dollars in cash paid, the receipt whereof

is hereby acknowledged, he does, by these presents, grant, bargain, sell, convey, transfer, assign, and set over, with a full guaranty against all troubles, debts, mortgages, claims, evictions, alienations, or other encumbrances whatsoever, unto Samuel Hull Dockery and Alfred Dockery, also of this parish, being here present and accepting the sale, the following described property, to wit: The northwest quarter of section nine, township eighteen, (18,) of range sixteen, (16,) containing one hundred and sixty acres, more or less: to have and to hold said tract of land unto the said purchasers, their heirs and assigns, forever; and the said vendor hereby promises, that he shall and will forever warrant and defend the land herein conveyed against all legal claims and demands whatsoever, and the vendor does moreover subrogate the purchaser to all the rights and actions of warranty which he has against all proceeding; vendors fully authorizing said purchaser to exercise said rights and actions in the same manner as he or they might or could have done; and the purchaser hereby dispenses with the certificate from the recorder of mortgages of this parish, and releases me, the notary, from all legal liabilities, for not having produced the same before signing this act.

Thus done and passed at my office, in the presence of Thomas Walters Littlejohn and Thomas Randolphe Simpson, good and lawful witnesses, who signed their names with the parties and me the notary, on this the eighteenth day of January, one thousand eight hundred and forty-eight.

(Signed) C. C. HEARNE,
S. H. DOCKERY,
A. DOCKERY.

Witnesses:
THOMAS R. SIMPSON,
THOMAS W. LITTLEJOHN.

W. LITTLEJOHN,
Notary Public.

STATE OF LOUISIANA,
Parish of Caddo.

I hereby certify that the foregoing is a true copy of the original as passed before me, and is on file in my office, 17th April, 1848.

WM. LITTLEJOHN,
Not. Public.

A true copy, given under my hand officially this 12th January, 1854.

THOMAS H. PITTS,
D'y Recorder.

Order of Court—Ans. of Hearne filed.

And afterwards, to wit, on the 29th day of March, 1854, the following entry was made upon the minutes of the district court, by William G. Kerley, clerk of said court:

JOHN BELL
vs.
C. C. HEARNE et al.

Answer of C. C. Hearne filed, calling John Howell and the representatives of Cadwaller Lewis in warranty. L. D. Marks, esq., appointed curator ad hoc for the heirs of Cadwaller Lewis, and being here in open court accepts said appointment.

Answer of Hearne, calling Howell in warranty.

JOHN BELL
vs.
C. C. HEARNE et al.

DISTRICT COURT, *Caddo Parish:* Colum. C. Hearne, one of the defendants in the above entitled cause, denied all and singular the allegations of the plaintiff's petition, and puts him to the proof thereof; and further answering, alleges that he is the owner of the land sued on by the following chain of title, viz: The United States sold the land in question to James Bell, then of Caddo; the land was sold at sheriff's sale, at the suit of St. John Fabre & Co. vs. James Bell, and was purchased by of Caddo, who sold the said land John N. Howell of Caddo, and Cadwaller Lewis, then of Caddo, but now deceased, and his succession opened in the State of Mississippi, and represented there by the widow and child of said Lewis. That said Lewis and Howell sold the land to your petitioner for the sum of five thousand dollars, and your petitioner has therefore a perfect title, and prays to be dismissed with costs, to be quieted in his title. Your petitioner prays that John N. Howell, of the parish of Caddo, and the legal heirs of C. Lewis, may be cited in warranty, and a curator ad hoc be appointed to represent them as absentees; and that if the court should be of opinion that plaintiff is entitled to recover the land in question, then respondent prays for judgment against said Howell and the representatives of said Lewis, in the sum of five thousand dollars, with interest from the day of judgment and costs; and prays for general relief.

CRAIN & NUTT,
Att'ys for Def't.

Order of Court—Continuance.

And afterwards, to wit, on the 30th day of May, 1854, the following entry was made upon the minutes of said court:

JOHN BELL
vs.
C. C. HEARNE et al. } Continued.

Citation to Jno. N. Howell.

In the District Court for the 18th judicial district, Parish of Caddo, State of Louisiana.

JOHN BELL
vs.
DOCKERY & HEARNE.

To John N. Howell, of the Parish of Caddo:

You are hereby cited to appear in the office of the clerk of the said court, in the town of Shreveport, in the parish of Caddo, and comply with the demand contained in the answer, calling in warranty, of which a copy is hereto annexed; or file your answer thereto in writing in the office of the said clerk in ten days after the service hereof, with one additional day for every ten miles between your residence and the office of said clerk.

Witness, Henry M. Spofford, judge of the said court, this 25th day of May, one thousand eight hundred and forty-four.

THOMAS H. PITTS,
D'y Clerk.

Sheriff's Return.

Received May 25th, 1854; and on the 29th of the same month served a copy hereof, together with a copy of the petition, on the within named John N. Howell, personally, about one mile from Shreveport, parish of Caddo.

W. HOLMES, *Dy. Sheriff.*

Order of Court—Continuance.

And afterwards, to wit, 24th day of May, 1854, the following order was made upon the minutes of the said court:

JOHN BELL
vs.
C. C. HEARNE et al. } Continued for service.

Answer of Hearne to call in warranty.

And afterwards, to wit, on the 3d day of May, 1855, C. C. Hearne, by his attorneys, Messrs. Crain & Nutt, filed his answer to Dockery, call in warranty, in words and figures as follows:

JOHN BELL
vs.
C. C. HEARNE et al.

Now comes C. C. Hearne in answer to the call in warranty of Samuel H. Dockery, and denies all and singular the allegations in the petition of the said Dockery.

CRAIN & NUTT,
Att'ys for C. C. Hearne.

Answer of Howell and heirs of Lewis.

And afterwards, to wit, on 3d day of May, 1855, the heirs of C. Lewis and John N. Howell, by their attorneys, filed their answer in words and figures as follows:

DISTRICT COURT,
Parish of Caddo.

JOHN BELL
vs.
DOCKERY & HEARNE.

Now comes John N. Howell and the heirs of C. Lewis, defendants in warranty in the above entitled suit, and for answer to plaintiff's petition deny all and singular the allegations therein contained, and for further answer adopts the allegations in the answer of the original defendants, and prays that Robert Smith, of the parish of Caddo, be cited in warranty; that if the court should be of opinion that the plaintiff is entitled to recover the land in question, these defendants pray for judgment against the said Robert Smith, for the sum of five thousand dollars and interest.

LEM. D. MARSH,
Curator for the heirs of C. Lewis.
CRAIN & NUTT,
Attorneys for John N. Howell.

And afterwards, to wit, on the 3d day of May, 1855, Robt. Smith came into court and accepted the call of warranty of Jno. N. Howell and the heirs of Lewis, in the words and figures as follows:

JOHN BELL
vs.
C. C. HEARNE et al.

In this case I accept service of the petition in warranty, and waive citation and time.

ROBT. SMITH.

Answer of Robt. Smith.

JOHN BELL
vs.
C. C. HEARNE et al.

Now comes the defendant Robert Smith, and for answer in warranty adopts all the allegations in the answer of the original defendants, and alleges that James Bell, from whom he derived title, was the owner of the land in question; says he was a purchaser in good faith; and for further answer pleads the prescription of ten years, and prays to be dismissed with the costs.

CRAIN & NUTT,
For ROBERT SMITH.

And afterwards, to wit, on the third day of May, 1855, as a regular term of the court, H. Thomas T. Land, presiding judge, and on the trial of this said cause was taken down by his honor the evidence on which the same was tried and decided, in words and figures following, to wit:

Trial—Pl'ffs Evidence—Patent—Admission.

JOHN BELL
vs.
C. C. HEARNE et al. } No. 3567.—Plaintiff's evidence.

Patent filed and marked "A;" see page 2 and 3. It is admitted that this patent issued to John Bell from the Government of the United States for the land described in his petition of the date of the 22d of June, 1850.

R. T. Noel's Evidence.

Statement of R. T. Noel, taken by consent of parties, and offered by plaintiff to prove value of improvements, filed and marked "B."

Sometime in the year 1849, say February, I sent a duplicate in the name of John Bell to Natchitoches, and received in return a patent in the name of Jas. Bell, for the three-quarter section of section nine, T. S. 18, range 16. I also had at the same time the receiver's receipt in the name of John Bell. The above named lands being claimed by C. C. Hearne and Mr. S. H. Dockery. Mr. John Bell instructed me to remit the papers relative to the land to Mr. Logan Hunton, of New Orleans. The time the patent was in my possession is not recollected, nor the exact time of remitting the papers to Mr. Hunton. I was acting as John Bell's agent in all of these matters. It is worth five dollars per acre to clear such lands as above mentioned; rent of land per acre is worth two dollars.

R. T. NOEL.

We agree that the statements R. T. Noel, J. B. Thompson, A. Currie, and Alfred Dockery, shall be used in evidence in the case of Bell vs. Dockery and Hearne et al.

WENANS & HARPER,
CRAIN & NUTT, *Attorneys.*

J. B. Thompson's Evidence.

Statement of J. B. Thompson filed and marked "C."

J. B. Thompson states that he has lived in the neighborhood of the land in controversy here for the last sixteen years; that the land claimed by plaintiff in his petition is now in the possession and is claimed by C. C. Hearne and S. H. Dockery; that is worth five dollars per acre to clear such land; that the tax assessor rates cleared land at five dollars per acre, and wood-land two dollars and half per acre. Thinks Dockery has been in possession of the land about three or four years; does not know how long D. has been cultivating the land.

JOSEPH B. THOMPSON.

A. Currie's Evidence.

Statement of A. Currie and A. Dockery, filed in evidence and marked "D."

A. Currie says that C. C. Hearne and S. H. Dockery claims and *has* in *his* possession the land claimed by John Bell, the plaintiff in this case; that he has claimed about thirty acres of land; one half of the thirty acres has been in cultivation about two years, the other half three years; that he has planted the whole of the thirty acres in cotton and corn during the years of fifty-three, four, and fifty-five. It is worth eight or ten dollars to clear land, and that land rents at two and two and a half dollars per acre. Cannot say whether the gin-house is on the portion of land claimed by John Bell or not; it is very near the line; the gin-house is worth about five hundred dollars. Alfred Dockery, brother to one of the defendants, joins A. Currie in his statements, and adopts the same as his own.

A. CURRIE & A. DOCKERY.

The testimony of A. Dockery and A. Currie was offered by plaintiff to prove the value of rent, and by the defendant to prove the value of improvements.

Testimony of Wm. Ledbetter.

Testimony of William Ledbetter, filed and marked "E" in this suit, which is in the words and figures as follows, to wit:

State of Louisiana, to any judge or justice of the peace in and for the county of Davidson, and State of Louisiana, or to any other duly commissioned and authorized officer to take testimony in civil cases by commission in and for the same, greeting:

Know ye, that we, reposing full and entire confidence in your integrity and ability, do hereby empower and authorize you to cite and cause to appear before you William Ledbetter, witness on the part of the plaintiff, in a certain suit now pending in the district court, in and for the parish of Caddo, State of Louisiana, number 3567, in which John Bell is plaintiff, and C. C. Hearne et al. are defendants; and the answers of the said witness, under oath, to the annexed interrogatories you shall reduce to writing, and cause the said answers to be subscribed by said witness, and after having certified the same under your hand and private seal, you enclose with this commission and annexed interrogatories, seal and direct them to the clerk of our said court on or before the 4th Monday of December, 1854.

Given under my hand and seal of office, this 24th day of October, A. D. 1854.

W. G. KERLEY, *Clerk.*

Interrogatories to be propounded to William Ledbetter, a resident of the city of Nashville, Davidson county, State of Tennessee, on the part of the plaintiff in this suit.

JOHN BELL
vs.
C. C. HEARNE et al. } No. 3567.

Interrogatory 1st. Please state if you are acquinted with James Bell, a brother of the plaintiff in this suit.

Interrogatory 2d. Please state if he is living; if not, please state the day, the year, and month that he died.

R. G. HARPER & JNO. W. BURTON,
Att'ys for Plaintiff.

We accept service of the foregoing interrogatories, and agree that the answers to the same may be used on the trial, and waive proof of capacity of judge or justice of the peace.

CRAIN & NUTT,
Att'ys for Hearne.
FORD & SLAUGHTER,
Att'ys for Dockery.

Ledbetter's Testimony.

The answer of Wm. Ledbetter, a witness in the case of John Bell against C. C. Hearne et al. in the suit now pending in the district court for the parish of Caddo, State of Louisiana, to the interrogatories submitted to him, and enclosed herewith.

To the first he answers, that he is acquainted with James Bell, the brother of the plaintiff, provided the honorable John Bell of this State is the plaintiff.

And to the second he answers, that James Bell has been dead, as well as he can recollect, for more than ten years, but he is unable to give even the year that he died.

WM. LEDBETTER.

Sworn to and subscribed before me, a justice of the peace for Rutherford county, State of Louisiana, the 18th November, 1854.

T. HENRY, *J. P.*

Testimony of Roland Jones.

Defendants' Testimony.

Roland Jones sworn, says, that he confirms what has been sworn to by John Wilson in regard to his application, in behalf of Crain and Nutt, for a copy of the patent in the name of James Bell. Witness also states that he examined the records of the Land Office at Washington city, and saw the record of a patent (cancelled) in the name of James Bell for the land sued on. Witness also saw on the same record a patent in the name of John Bell for the same land, of a date

some years subsequent to the date of the patent of James Bell. Witness heard John Bell say that he had sent James Bell to Louisiana with money to enter land for him, (John Bell,) and expressed surprise that any land purchased should be in the name of James Bell.

Testimony of John Wilson.

Depositions of John Wilson, filed in this case, in the words and figures as follows:

The State of Louisiana, to any commissioner of the State of Louisiana, or to any judge or justice of the peace in the District of Columbia, in and for the same, greeting:

Know ye, that we, reposing full and entire confidence in your integrity and ability, do hereby empower and authorize you to cite and cause to appear before you John Wilson, Commissioner of the Land Office, or the acting Commissioner of the General Land Office at Washington, D. C., witness on the part of the defendant in a certain suit now pending in the district court in and for the parish of Caddo, State of Louisiana, number 3567, in which John Bell, plaintiff, and C. C. Hearne et al. are defendants; and the answers of the said witness under oath to the annexed interrogatories you shall reduce to writing, and cause the said answers to be subscribed by said witness, and after having duly certified the same under your hand and private seal, you will inclose with this commission and annexed interrogatories, seal and direct the same to the clerk of our said court, on or before the 4th Monday in October next, 1854.

Witness the Hon. H. M. Spofford, judge of our said court, this 13th day of July, 1854.

W. G. KERLEY, *Clerk.*

JOHN BELL
vs.
DOCKERY and HEARNE. } DISTRICT COURT, *Parish of Caddo.*

Interrogatories to be answered by John Wilson, Commissioner of the Land Office at Washington, D. C., witness for defendant in this case.

1st. State the facts connected with the entry or entries of the W. ½ and S.E. ¼ of section 9, T. 18, range 16, viz: west half and southeast quarter of section (9) nine, in township eighteen, of range sixteen, in the land district of Natchitoches, La.

2d. Please to state what appears from the books in your office, and particularly who first entered the land, and the date of the entry, and who next entered the land, and the date of the entry; to whom was a patent issued first, and its date and substance; annex a copy or give your reasons for refusal? To whom was the second patent issued; its date?

3d. Why was the first patent cancelled, if it was cancelled at all, and at whose solicitations, and at whose representations; state what

written representations appear in your office, and annex copies of the same; if you will not annex copies, state your reasons for not complying?

4th. Was the second patentee, John Bell, Senator from the State of Tennessee, or not?

5th. Did the defendant, C. C. Hearne, comply with the requirements of the department, by tendering through his attorneys, Crain and Nutt, an affidavit of the materiality of a copy of the patent issued for the said land in the name of James Bell, and instruct the costs to be paid; and did you not state in a letter to said attorney that you would not furnish, or would only furnish such a copy after the receipt of such affidavit?

6th. Please state all the facts as appear from the books of the department; annex the copies required.

CRAIN & NUTT,
Att'ys for Defendants.

Lawrence P. Crain, attorney for defendant Hearne, on oath, deposes and says, that the answers of the Commissioner of the Land Office at Washington, to the above interrogatories, are material, and will assist the defendant, C. C. Hearne, in his defence; that Hearne is absent, and prays that a commission issue, and that a commissioner be appointed.

LAW. P. CRAIN.

Sworn to and subscribed before me, this 12th July, 1854.
W. G. KERLEY, *Clerk.*

Let a commission issue, directed to any commissioner of the State of Louisiana, or any judge or justice of the peace in the District of Columbia, returnable to our next term of court.

Given in office, at Shreveport, this 13th July, 1854.
W. G. KERLEY, *Clerk.*

We accept service of the within interrogatories, and waive service of the same.

HARPER & BURTON,
Att'ys for Pl'ff.

Deposition of the witness produced, sworn and examined, by virtue of the annexed commission, on the fourth day of Aug., in the year of our Lord one thousand eight hundred and fifty-four, in the city of Washington, in the District of Columbia, before me, Nicholas Cullum, a commissioner for the State of Louisiana, and residing in the city of Washington, in a certain cause now pending in the district court in and for the parish of Caddo, State of Louisiana, numbered 3567, in which John Bell is plaintiff, and C. C. Hearne et al. are defendants.

John Wilson, a witness on the part of the defendant, being produced and sworn, answers as follows to the interrogatories propounded in the cause:

In answer to the first interrogatory, I state, that on the monthly returns for July, 1839, of the receiver of public moneys for the district of Natchitoches, the following entry was made:

Date of Receipt and Certificate.	No. of Receipt.	By whom purchased.		Tract purchased.				Quantity.		Price per acre.	Purchase money.	
		Name.	Residence.	Section or part of section.	East.	Town.	Range.	Acres.	100ths.	Dolls. Cts.	Dolls.	Cts.
1839. July 3d.	1270	John Bell.	Tennessee.	W. ½ & S.E. ¼	9	18	16	478	89	1 25	598	61

On the register's abstract of land for the same month, the following entry is made:

1839.

July 3.—1270, James Bell, Nashville, Tenn., W. ½ and S. E. ¼ 9, 18, 16—478.89—1 25—598 61.

These returns are of the same entry, as they are identical in every respect, except the names of the purchasers.

A certificate was issued by the register for this entry, copy appended, marked A, in the name of James Bell. A duplicate of that certificate was issued by the register for the same entry, in the name of John Bell, copy appended, marked B; and the receipt of the receiver was issued for the purchase-money received for the land, in the name of John Bell, copy appended, marked "C." These documents all bear the same date.

On the 10th of July, 1844, a patent was made in the name of James Bell, in accordance with the register's returns, and transmitted to the register at Natchitoches, on the 12th of March following. The patent was in the usual form; a blank of which is herewith appended, "paper D." I decline giving a certified copy of said patent, for the reasons that it has been cancelled, and the record of it is not such a record as contemplated by the act of Congress, approved April 25, 1812. The reasons of this decision are fully set forth in my report of the 15th July, 1854, to the Secretary of the Interior, on your appeal copy, appended, document E. See, also, letter of July 27, 1854, from the Secretary of the Interior, affirming this decision, copy marked "F."

Answer to 3d interrogatory. It appears that on the 22d of June, 1850, the Hon. John Bell filed a duplicate certificate of purchase of the register at Natchitoches, above referred to, copy appended, marked "B," in his favor for the land in question, upon which a patent in his name was made out for the same land by direction of my predecessor, and transmitted to him on that day, and the patent, in the name of James Bell, was cancelled. The date of this cancellation is not given in the record. There is no written representation in reference to the matter on file or record in the General Land Office, so far as I am advised.

Answer to fourth interrogatory. John Bell was a Senator from the State of Tennessee when the patent in his favor issued.

Answer to fifth interrogatory. Messrs. Crain & Nutt, on the 7th of March last, did apply to the General Land Office for a certified copy of the patent which issued for the land in question, and they were told in reply, that certified copies could not be furnished without a compliance with the rule of the office. Subsequently they sent to the office, through the Hon. R. Jones, an affidavit in compliance with said rule; but when it was ascertained that they wanted a copy of the record of a cancelled patent, the office declined complying with their request. In relation to sixth interrogatory, I state that all the facts on the case, as shown by the books of the General Land Office, have been given in the preceding answers.

JOHN WILSON,
Commissioner of the Gen. Land Office.

August 4, 1854.

DISTRICT OF COLUMBIA,
County of Washington.

I, Nicholas Callan, a commissioner appointed by the Governor of the State of Louisiana, do hereby certify, that John Wilson, the Commissioner of the Gen. Land Office at Washington, D. C., the deponent, was by me duly sworn to declare the truth on the questions put to him in this cause; that the interrogatories were produced to him, and his answers thereto taken in writing, and subscribed by him in my presence on the day mentioned in the caption.

In testimony whereof, I, the said commissioner, have hereunto set my hand and seal the day and year first mentioned.

N. CALLAN,
Commissioner of the S. of Louisiana.

Referred to as "A" in the foregoing answer.

No. 1270.

LAND OFFICE AT NACHITOCHES, *July* 3*d*, 1839.

It is hereby certified, that in pursuance of law, James Bell, Nashville, State of Tennessee, on this day purchased of the register of this office the lot or west half and southeast quarter of section No. nine in township eighteen of range sixteen, containing four hundred and seventy-eight $\frac{8\,0}{1\,0\,0}$ acres, at the rate of one dollar and 25 cents per acre, amounting to five hundred and ninety-eight dollars and $\frac{6\,1}{1\,0\,0}$, for which the said James Bell has made payment in full as required by law. Now, therefore, be it known, that on the presentation of this certificate to the Commissioner of the General Land Office, the said James Bell shall be entitled to receive a patent for the lot above described.

(Cancelled.)

PATRICK O. LEE,
Register.

Referred to as "B" in the foregoing answer.

JOHN WILSON,
Commissioner.

No. 1270.

LAND OFFICE AT NATCHITOCHES, 3*d July*, 1839.

It is hereby certified, that in pursuance of law, John Bell, Nashville, State of Tennessee, on this day purchased of the register of this office the lot or west half and the southeast quarter of section No. nine, in township No. eighteen, of range No. sixteen, containing four hundred and seventy-eight $\frac{89}{100}$ acres, at the rate of one dollar and 25 cents per acre, amounting to five hundred and ninety-eight dollars and 62 cents, for which the said John Bell has made payment in full as required by law.

Now, therefore, be it known, that on presentation of this certificate to the Commissioner of the General Land Office, the said John Bell shall be entitled to receive a patent for the lot above described.

PATRICK O. LEE,
Register.

$598 61.

Filed by me in the Gen'l Land Office, Washington, this 22d of June, 1850.

JOHN BELL.

Referred to as "C" in the foregoing answers.

No. 1270.

RECEIVER'S OFFICE AT NATCHITOCHES, *July* 3*d*, 1839.

Received of John Bell, of Nashville, Tennessee, the sum of five hundred and ninety-eight dollars and sixty-one cents, being in full for the west half and southeast quarter of section No. 9, in township 18, of range No. sixteen, containing four hundred and seventy-eight acres and eighty-nine hundredths, at $1 25 per acre.

$598 61. BENOITS LAWRENTS, *Receiver.*

Referred to as "D" in the foregoing answers.

The United States of America, to all those whom these presents shall come, greeting:

Whereas ha deposited in the General Land Office of the United States a certificate of the register of the land office at , whereby it appears that full payment has been made by the said , according to the provisions of the act of Congress of 24th of April, 1820, entitled An act making further provisions for the sale of the public land for , according to the plat or general survey of the said lands returned to the General Land Office by the Surveyor General, which tract has been purchased by the said .

Now know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and to heirs, the said tract above described; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances

of whatever kind thereunto belonging, unto the said , and to heirs assigns forever.

In testimony whereof I, , President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed. Given under my hand at the city of Washington, the day of , in the year of our Lord one thousand eight hundred and , and of the independence of the United States seventy- .

By the President:

By

Receiver of the Gen. L. Office.

Cancelled.

Referred to as "E" in the foregoing answers.

GENERAL LAND OFFICE, *July 15th*, 1854.

SIR: The Hon. Roland Jones has taken an appeal from the decision of this office, refusing a certified copy of a cancelled patent. The circumstances of the case are substantially as follows, viz:

On the 10th July, 1844, a patent was issued on certificate No. 1270 in favor of James Bell, for the W. $\frac{1}{2}$ and S. E. $\frac{1}{4}$ of 9, 18, 16 E., Natchitoches land district, Louisiana. Whether this patent was ever delivered the records do not show.

On the 22d June, 1850, the Hon. John Bell surrendered a duplicate of the same number and date, and for the same tract of land as the above; and on that duplicate it appears that a new patent issued by order of my predecessor in favor of John Bell, and delivered to him; the patent and record in the name of James Bell, were cancelled. Mr. Jones applied for a certificate of that cancelled patent or cancelled record, and I refused it, on the grounds that having been cancelled they had no legal existence. There are not, therefore, record books and papers belonging to this office, within the meaning of the act of 25th of April, 1813, establishing this office, of which alone certified copies can be granted under that law. The proper course, in my opinion, is to take the testimony of the recorder of this office on the subject, under an order from the proper court. The whole matter is respectfully submitted for your decision.

Very respectfully,

JOHN WILSON, *Com.*

Hon. R. MCCLELLAND,
Secretary of the Interior.

Referred to in the foregoing answers as "F."

DEPARTMENT OF THE INTERIOR, *July 27th*, 1854.

SIR: Yours of the 15th instant, in relation to an appeal taken by the Hon. R. Jones from your decision refusing a certified copy of a cancelled patent, has been received.

In reply, I have to state that I concur in your decision, on the ground that such cancelled patent is not such a record book or paper as is contemplated by the act of April 25th, 1812.

Very respectfully, your obt.,
R. McCLELLAND, *Secretary.*

To the COMMISSIONER OF THE GENERAL LAND OFFICE.

Sheriff's sale to Robt. Smith.

The sheriff's sale to Robert Smith, filed in evidence in this cause, and marked No. 2, in the words and figures as follows, to wit:

STATE OF LOUISIANA,
Parish of Caddo.

Whereas I, Matthew Watson, sheriff of the parish of Caddo, State of Louisiana, by virtue of a writ of fieri facias, to directed by the hon. the district court in and for the parish of Natchitoches, in the case of St. John Fabre & Co. vs. James Bell, being numbered on the docket of said court No. 2334, after having fulfilled and complied with all the foregoing legal requisites of the law, did seize *and* all the right and interest of James Bell in the following described property, to wit: The west half and the southeast quarter of section No. nine, (9,) in township eighteen, (18,) of range No. sixteen west, containing four hundred and seventy-eight acres of land, situated in the parish of Caddo, as per No. 1270, levied on as the property of the defendant, James Bell, to satisfy the above entitled suit; and after having given due and legal notice to the said defendant, James Bell, of the said seizure, in the manner pointed out by law, I advertised the said property for sale, after the legal expiration of delay from the time of said notice, to wit, on the first day of March, A. D. 1841, by advertisement composed in English, announcing the said sale to take place at the door of the Caddo Exchange, in the town of Shreveport, on the 3d day of April, A. D. 1841, posted on the door of the court-house, and at two other places in the parish, there being no paper published, from the first day of March to the day of sale, being full thirty days from the date of the first notice given; and after having further complied with and performed all the additional provisions requisite, and after said property having been duly advertised and appraised, did expose the same at public sale, according to law, at the door of the Caddo Exchange, in the town of Shreveport, on the third day of April, A. D. 1841, and no one having bid two-thirds of the appraised value, I proceeded again to advertise the said property for sale, by notice given and posted as before, announcing that the said land would be offered for sale on a twelve months' credit, the previous offering having been for cash, on the 27th day of April, 1841; the said notice being posted from 3d day of April, A. D. 1841, to the day of sale; and having complied with all the additional requisites, and having read the following additional mortgages, certificates from the parish judge, viz:

STATE OF LOUISIANA,
Parish of Caddo.

I hereby certify that the only mortgages on record in my office against James Bell is a judicial mortgage in favor of St. John Fabre & Co., for the sum of three hundred dollars, with five per cent. interest on the same from the first day of August, 1839, till paid—

Proceeded to offer the same at public sale on the following terms, to wit, on twelve months' credit, the purchaser to give bond and approved security, with mortgage on the premises until final payment. When, Robert Smith being the last and highest bidder, the said property was adjudged to him, the said Smith, for the price of sixty-two and ½ cents per acre, for which he gave his bond, payable in twelve months after date, with, as surety, Thomas D. Gary, bearing interest at five per cent. per annum, amounting to the sum of two hundred and ninety-nine and twenty-nine $\frac{1}{100}$ dollars, which I hereby acknowledge to have been paid.

Now, therefore, know all men by these presents, that I, the said sheriff, in consideration of the premises, and by virtue of the laws of the State of Louisiana in such cases made and provided, do sell and transfer said aforedescribed property to the said Robert Smith, and all the right and title which the said James Bell had in or to the said before described property; to have and to hold the same to the said Robert Smith, his heirs and assigns forever. The said Smith being present and accepting the same.

In witness whereof, I have hereunto signed my name, at the town of Shreveport, parish of Caddo, in the State of Louisiana, this twenty-seventh day of April, in the year of our Lord one thousand eight hundred and forty-one.

MATTHEW WATSON, *Sheriff.*
ROBERT SMITH.

Signed in the presence of—
L. P. CRAIN,
ROLAN JONES.

Act of Sale from Robert Smith.

The act of sale from Robert Smith, filed in this suit, and numbered 3, to Lewis & Howell, is in words and figures as follows, to wit:

STATE OF LOUISIANA,
Parish of Caddo.

Be it known, that this day, before me, Henry John Gray Battle, a notary public in and for the parish of Caddo, State of Louisiana, duly commissioned and sworn, personally came and appeared Robert Smith, of the parish and State aforesaid, who declared that for the consideration of two hundred and eighty dollars cash, the receipt whereof is hereby acknowledged, he does by these presents grant, bargain, sell, convey, transfer, assign, and set over, with a full guaranty against all claims, troubles, debts, mortgages, evictions, donations, alienations, and other incum-

brances whatsoever, unto C. Lewis and John N. Howell, of the said parish and State, trading and dealing in the town of Shreveport under the commercial name of Lewis & Howell, present, and accepting the sale of the following described property, to wit: a tract or parcel of land situated, lying, and being in the parish of Caddo, State of Louisiana, and known on the map or plan of said parish as the west half and the southeast quarter of section No. 9, in township 18, of range 16 west, containing four hundred and seventy-nine $\frac{89}{100}$ acres, being the same land purchased at a sale made by the sheriff of the parish of Caddo, on the twenty-seventh day of April, 1841, by the said Robert Smith, and which was sold as the property of James Bell, to satisfy a in favor of St. John Fabre & Co.: to have and to hold the said tract of land unto the said purchasers, Lewis & Howell, their heirs and assigns forever. And the said vendor hereby further promises that he and his heirs shall and will forever warrant and defend the land herein conveyed against all legal claims and demands whatever. The said vendor moreover subrogates, transfers unto the said purchasers all the right and actions to be by them enjoyed and exercised, in the same manner as they might have been by the present vendor. The purchasers waive the production of the certificate of mortgages from the recorder of mortgages of this parish, and exonerate me, the notary, from all responsibility.

Done and passed in my office, in the town of Shreveport, parish of Caddo, and State aforesaid, in the presence of Samuel D. Bishop and John B. Wilson, witnesses of lawful age, and domiciliated in this parish, who hereunto sign their names with the parties and me, the said notary, on this 9th day of March, in the year of our Lord one thousand eight hundred and forty-four.

ROBERT SMITH,
CADWALADER LEWIS,
JOHN N. HOWELL.

Attest: JOHN B. WILSON,
S. D. BISHOP.

H. J. G. BATTLE, *Notary Public.*

Filed and recorded March 9, 1844.

A true copy of the original act on file and of record in my office.

THOMAS H. PITTS,
Dept. Recorder.

Judgment and Fi. Fa. in suit of St. John Fabre vs. James Bell.

Judgment and fi. fa. in the suit of St. John Fabre & Co. vs. James Bell—leave to substitute a copy filed and marked No. 4 and 5.

The fi. fa. offered in this suit is in words and figures as follows, to wit:

The State of Louisiana, to the sheriff of the parish of Caddo, greeting:

We command you, that you demand from James Bell the sum of three hundred dollars, with 5 per cent. interest thereon from Aug. 1st,

1839, and also the sum of ten dollars, tax fees, together with all the costs which St. John Fabre & Co. lately recovered by judgment in the district court in and for the parish of Natchitoches; and if he shall not pay the same on demand, that then you cause the said sum to be made out of the personal goods of the said James Bell, except slaves, in your parish, if sufficient personal estate, exclusive of slaves, can be found therein; but if sufficient personal estate of James Bell, exclusive of slaves, cannot be found in your parish, that then you cause the said sum to be made of the real estate and slaves of the said James Bell in your parish, or of the rights and credits to him belonging; and that you have those moneys before our said court to render to the said John Fabre & Co. for the judgment aforesaid, in seventy days from the date hereof, together with this writ.

Witness the hon. J. G. Campbell, judge of the said court, this twenty-eighth day of January, in the year of our Lord one thousand eight hundred and forty-one.

M. R. ARIAL, *D'y Clerk.*

Sheriff's Return.

Rec'd Feb. 10th, 1841, and on the 15th day of same month demanded the amount of the within fi. fa. of the defendant, James Bell, and he refused to point out property. I called on the plaintiff's attorney, who pointed out, and I levied on the following described property, to wit: The west half and the southeast quarter of section No. nine, township eighteen of range sixteen west, containing four hundred and seventy-eight acres of land, situated in the parish of Caddo, to satisfy this writ of fi. fa., which above described property was on the 1st day of March, 1841, advertised by me by placing the advertisement on the court-house door, and two other conspicuous places in the parish, to be sold in the town of Shreveport, on the 3d day of April, 1841, for cash; and in consequence of its not bringing two-thirds of its appraised value at the first offer, the above described property was re-advertised in the same manner, to be sold on the 27th day of April, 1841, on a credit of twelve months; and, accordingly, in pursuance of said advertisement, said property was on said 27th of April again offered for sale, and Richard Smith being the highest and last bidder, it was adjudicated to him for the sum of sixty-two and ½ cents per acre, making the amount of two hundred and ninety-nine dollars and twenty-nine cents, for which amount he gave his bond in solido with Thomas D. Gary, in favor of plaintiff, payable twelve months from the last above mentioned date, bearing five per cent. interest per annum, from date thereof. The appraisement of said property was made, and appears within, by papers annexed.

M. WATSON, *Sheriff.*

I hereby certify the foregoing to be a true copy of the original execution in the case entitled St. John Fabre & Co. vs. James Bell, and

numbered on the docket of the district court No. 2334, and of the return of execution on file, and of record in my office.

Given under my hand and seal of office, this 8th day of May, 1855.

W. P. MORRIS, *Clerk*.

The following is a true copy of the judgment filed in evidence in this case of St. John Fabre & Co. vs. James Bell:

Judgment of Fabre vs. *James Bell.*

ST. JOHN FABRE & CO.
vs.
JAMES BELL.

In District Court, parish of Natchitoches.—April term, 1840.

In this case, by reason of the law and evidence, and the confession of the defendant, James Bell, proved to the satisfaction of the court, it is ordered, adjudged, and decreed, that the plaintiff, St. John Fabre & Co., do recover of the defendant, James Bell, the sum of three hundred dollars, with five per cent. interest per annum thereon, from the first day of August, 1839, till paid, and costs of suit, to be taxed with a stay of execution of this judgment till first day of August, 1840, and that after that period this judgment shall be executory against said Bell, without any notification of this judgment being previously given to him.

Done and signed in open court, this 30th of April, 1840.

GEO. R. KING,
District Judge of fifth Judicial District.

Filed April 30th, 1840.

S. M. HYMS, *Clerk*.

I hereby certify *that* the above to be a true copy of the original judgment on file, and of record in my office.

Given under my hand and seal of office, this the 8th day of May, A. D. 1855.

W. P. MORRIS, *Clerk*.

Crain's Testimony.

The testimony of L. P. Crain was taken down in this cause in the words as follows, to wit:

Says he knew James Bell in 1839, 1840, and knew he was entering lands for himself and John Bell. Knows James Bell has several pieces of land in this and adjoining parishes. Witness had an execution against James Bell, 1840, and he pointed out the identical land in controversey for seizure.

X-examined.—Says he considered James Bell a legal resident of Louisiana.

W. Hacket's Testimony.

Plaintiff's rebutting Testimony.

W. H. Hacket, sworn, say she has been planting in Caddo parish, in the hills, about twelve years, and cleared a good deal of land; it is worth about five dollars per acre to clear land in the hills; cleared land is worth two to two and half dollars per acre for rent.

Act of Sale from Lewis & Howell to Hearne.

And afterward the act of sale from Lewis & Howell to C. C. Hearne was filed in evidence, in the words and figures as follows, to wit:

STATE OF LOUISIANA,
Parish of Caddo.

Be it known that this day, before me, Henry John Gray Battle, a notary public in and for the parish of Caddo, and State aforesaid, duly commissioned and sworn, came and appeared Cadwalader Lewis, John N. Howell, residing and trading in the town of Shreveport, parish and State aforesaid, under the name and style of Lewis and Howell, who declared that for the consideration of six hundred dollars, four hundred and fifty-three dollars of which is cash, the balance being one hundred and forty-six dollars and $\frac{85}{100}$, payable in promissory note drawn by C. C. and S. R. Hearne, in favor of Lewis and Howell, and done on the first day of January, 1845, by these presents grant, bargain, sell, and deliver with full guaranty against all debts, troubles, liens, mortgages, and troubles, evictions and encumbrances whatever, unto Columbus C. Hearne and Samuel R. Hearne, of the same parish and State, doing buisness under the name and style of C. C. Hearne & Co., present and accepting the sale, the following described property, to wit: a tract or parcel of land situated, lying and being in the parish and State aforesaid, and known on the map of said parish as the west half and the southeast quarter of section No. (9,) in township No. eighteen, (18,) of range No. (16) west, containing four hundred and seventy-nine $\frac{89}{100}$ acres, lying and being the same land purchased by the said Lewis and Hearne from Robert Smith, by act passed before me on the 9th day of March, 1844, and which the said Robert Smith purchased at a sale made by the sheriff of the parish of Caddo, on the 27th day of April in the year 1841: to have and to hold said tract of land unto the said purchasers, their heirs and assigns forever. And the said vendors hereby further promise, that they and their heirs shall and will forever warrant and defend the land herein conveyed against all legal claims and demands whatsoever. The said vendors moreover transfer unto said purchasers all the rights and actions of warranty to which they have been entitled against all the former proprietors of the land herein conveyed, subrogating said purchasers to said rights and actions, to be by them enjoyed and exercised in the same manner as they might have been by the present vendors.

And now to these presents personally came and intervened Madame Mary Jane Howell, of the same residence, wife of the said John N. Howell, who declared unto me the notary that is her wish and intention to release in favor of the said C. C. and S. R. Hearne the land herein conveyed from any rights, claims, mortgages, or privileges to which she may be entitled, whether by virtue of her marriage with the said Howell, or otherwise. Whereupon I, the said notary, did inform the said Jane, apart and out of the hearing of her said husband, that she had by law a legal mortgage on the property of her said husband: First, for the restitution of her dowry, and for the re-investment of the dotal property sold by her said husband which she brought in marriage, reckoning from the celebration of the marriage. Secondly, for the restitution and re-investment of dotal property by her acquired since marriage, whether by succession or donation, from the day the succession was opened or the donation perfected. Thirdly, for nuptial presents. Fourthly, for debts by her contracted with her said husband; and, fifthly, for the amount of paraphernal property alienated by her, and received by her said husband, or otherwise disposed of for the individual interest of her said husband.

And the said Jane did thereupon declare unto me, notary, that she was fully aware of and acquainted with the nature and extent of the rights and privileges thus secured to her by law, on the property of her said husband. That she, nevertheless, did persist in her intention of renouncing not only all the rights, claims and privileges herein before enumerated and described, but all others of any nature or kind whatever, to which she may be entitled by any laws now or heretofore enforced in the State of Louisiana. And the said John N. Howell, husband, being now present aiding and authorizing the said Jane in the execution of these presents, the said Jane did again declare that she did and does hereby make a formal renunciation and relinquishment of all her said rights, claims and privileges in favor of the said C. C. and S. R. Hearne, binding herself and her heirs at all times to acknowledge and sustain the validity of this renunciation. This done and passed in my office, in the parish of Caddo, in the presence of F. M. Armor and Charles R. Griswold, witnesses, both of this parish, who hereunto sign their names with the parties and me, the said notary, on this the sixth day of July, in the year one thousand eight hundred and forty-four.

C. LEWIS,
JOHN N. HOWELL,
MARY JANE HOWELL,
C. C. HEARNE,
for himself, and
S. R. HEARNE.

Attest: F. M. ARMOR,
CHARLES B. GRISWOLD.

H. J. G. BATTLE,
Notary Public

Endorsed:

Filed and recorded July 6, 1844.

A true copy from the original act on file and of record in my office.

Attest: THOMAS H. PITTS,
Dept. Recorder.

Sale of Hearne to Dockery.

And afterwards, the sale of C. C. Hearne to S. & A. Dockery was filed in evidence in the words and figures as follows, and marked No. 7:

STATE OF LOUISIANA,
Parish of Caddo.

Be it known, that this day, before me, William Littlejohn, notary public in and for the parish of Caddo, State of Louisiana, duly commissioned and sworn, personally came and appeared Columbus C. Hearne, of this parish, who declared that for the consideration of the sum of four hundred dollars in cash paid, the receipt whereof is hereby acknowledged, he does, by these presents, grant, bargain, sell, convey, transfer, assign and set over, with a full guaranty against all troubles, debts, mortgages, claims, evictions, donations, alienations or other encumbrances whatsoever, unto Samuel Hull Dockery and Alfred Dockery, also of this parish, being here present and accepting this sale, the following described property, to wit: the northwest quarter of section 9, township 18, range 16, containing one hundred and sixty acres, more or less; to have and to hold said tract of land unto the said purchasers, their heirs and assigns forever; and the said vendor hereby promises that he shall and will forever warrant and defend the land herein conveyed against all legal claims and demands whatsoever. And the vendor moreover subrogates the purchasers to all the rights and actions of warranty which he has against all preceding vendors, fully authorizing said purchasers to exercise said rights and actions in the same manner as he or they might or could have done. And the purchasers hereby dispense with the certificate from the recorder of mortgages of this parish, and release me, the notary, from all legal liabilities for not having produced the same before signing this act. Thus done and passed at my office, in the presence of Thomas Matthew Littlejohn and Thomas Randolph Simpson, good and lawful witnesses, who signed their names with the parties and me, the notary, on this 18th day of January, one thousand eight hundred and forty-eight.

C. C. HEARNE,
S. H. DOCKERY,
A. DOCKERY.

Attest:
THOMAS R. SIMPSON,
THOMAS M. LITTLEJOHN.

WILLIAM LITTLEJOHN,
Notary P.

STATE OF LOUISIANA,
Parish of Caddo.

I do hereby certify that the foregoing is a true copy of the original, as passed before me and is on file in my office.
17th of April, 1848.

WILLIAM LITTLEJOHN, *N. P.*

A true copy.

Given under my hand officially, this January 12th, 1854.

THOMAS H. PITTS,
Deputy Recorder.

Bill of Exceptions.

And on the same day, and at the same time, the following bill of exceptions was tendered by the counsel of plaintiff, and signed by his honor the judge, in the words and figures as follows, to wit:

JOHN BELL
vs.
HEARNE & DOCKERY.

18th District Court, parish of Caddo.—May Term, 1855.

Be it remembered, upon the trial of this cause the defendants offered in evidence the deposition of John Wilson and the testimony of Rolan Jones, to prove that a patent had issued by the United States to James Bell, and that the patent exhibited by the plaintiff and given in evidence was fraudulent, to which the plaintiff objects, by counsel, on the grounds that such evidence was not admissible under the allegations of defendants' answer, and upon the further ground that parol testimony is not admissible to prove the contents or the existence of a patent; and the same objection was made to R. T. Noel; which objection the court overruled for the following reasons: Because, from the testimony it appeared that the patent issued to James Bell had been cancelled and delivered, and that it was competent to show by parol the contents of a patent which had been lost, destroyed or cancelled; and further, that it was competent to show fraud by parol, and because the plaintiff was not taken by surprise by the offering of this testimony. To which ruling of the court plaintiff excepts and tenders this bill, and prays that the same be signed and made part the record, which is done in open court this 5th day of May, 1855.

THOMAS T. LAND,
Judge of 18*th dist.*

And on the year and on the day last mentioned was rendered by the Hon. T. T. Land, judge presiding, a final judgment in the cause, in the words and figures as follows, which was signed by him on the 5th day of May, 1855.

Judgment.

JOHN BELL
vs.
C. C. HEARNE et al.

In District Court, Parish of Caddo—May Term, 1855.

In this case, by reason of the law and evidence it is ordered, adjudged and decreed, that the plaintiff's demand be rejected, and that the defendants recover their costs.

Done and signed in open court, this 5th day of May, 1855.

THOMAS T. LAND,
Judge of 18th District.

And afterwards a motion for a new trial was filed in this cause in the words and figures as follows, to wit:

Motion for a New Trial.

JOHN BELL
vs.
DOCKERY & HEARNE.

The plaintiff, John Bell, by his attorney, moves that the judgment of the court in the above suit be set aside, and a new trial be granted the plaintiff on the following grounds: That the judgment is contrary to the law and evidence given in the cause.

HODGE, HARPER & W.

And afterwards, to wit, on May the 4th, 1855, the following order was entered upon the minutes of the court by W. G. Kerley, clerk:

Motion for a New Trial filed.

JOHN BELL
vs.
C. C. HEARNE et al.

And afterwards, to wit, on the 5th day of May, 1855, the following motion for an appeal was filed, in the words and figures as follows, to wit:

Motion for an Appeal.

JOHN BELL
vs.
DOCKERY & HEARNE.

In this case the plaintiff, John Bell, moves the court for a devolutive appeal from the final judgment rendered against him; said appeal to be made returnable to the next term of the supreme court at Monroe.

WINANS & HARPER.

Let the appeal be granted as prayed for, the plaintiff complying with the provisions of the law.

1334

And afterwards, to wit, on the 5th day of May, 1855, the following order was made upon the minutes of the court by W. G. Kerley, clerk.

Order for Appeal.

JOHN BELL
vs.
C. C. HEARNE et al.

Motion for a new trial overruled; motion for an appeal*ed* filed and appeal granted; bond for a suspensive appeal, fixed according to law; and bond for a devolutive appeal, fixed at $200. Whereupon it is ordered by the court, that said appeal be made returnable before the supreme court of the State of Louisiana on the first day of the next term thereof, to be holden at the town of Monroe, parish of Ouachita, State of Louisiana, and defendants' counsel being here, in open court, takes cognizance and waives service of the same.

And afterwards, to wit, on the 20th day of May, 1855, John Bell, by his attorney R. G. Harper, filed with the clerk of the district court, in and for the parish and State, an appeal bond in the words and figures as follows, to wit:

Appeal Bond.

JOHN BELL
vs.
HEARNE & DOCKERY. } In District Court.

Know all men by these presents that we, John Bell, as principal, and R. G. Harper, as security, are held and firmly bound unto the defendant in the above entitled cause, Hearne & Dockery, his heirs, executors, and assigns, in the sum of two hundred dollars, which we hereby bind ourselves to pay in solido.

Dated at Shreveport, this 20th day of May, 1855.

The condition of the above obligation is such, that whereas the said John Bell, as plaintiff in the above entitled suit, has obtained from the hon. the district court for the parish of Caddo, State of Louisiana, an order granting him a devolutive appeal from a certain final judgment rendered in said suit, No. 3567, and in favor of the defendants.

Now, therefore, if the said John Bell shall prosecute his said appeal with effect, or shall pay or cause to be paid such judgment as may be rendered therein against him, or if the execution that may issue therein against him shall be satisfied out of the goods and chattels, rights and credits of the said appellant or his securities, then, and in that case, this obligation to be void; otherwise to remain in full force and virtue.

JOHN BELL,
Per his attorney, R. G. Harper.
R. G. HARPER.

STATE OF LOUISIANA,
Parish of Caddo.

In District Court.

I, W. G. Kerley, clerk of the district court in and for the parish of Caddo and State of Louisiana, do hereby certify, that the above and foregoing 48 pages contain a true and faithful transcript of all the documents filed, orders made, proceedings had, and evidence adduced, on the trial of the cause, wherein John Bell is plaintiff, and Hearne and others are defendants, No. 3567 on the docket of our said court, and on file and of record in my office.

[L. S.] Given under my hand and official signature, this the 6th of July, A. D. 1855.

W. G. KERLEY, *Clerk.*

SUPREME COURT OF THE STATE OF LOUISIANA.

Monroe Special Term, 1855.

SATURDAY, *July 28th*, 1855.

Present: Their honors C. Voorhies, A. N. Buchanan, H. M. Spofford, and J. N. Lea.

JOHN BELL
vs.
C. C. HEARNE et al.

Appeal from the District Court of the Parish of Caddo.

In this cause the court this day delivered their opinion in writing, in the words and figures following:

The plaintiff claims the ownership of the west half and southeast quarter of section nine, in township eighteen, of range sixteen, in the district of land subject to sale at Natchitoches, Louisiana, under a patent from the United States dated 22d June, 1850. He alleges that the defendants, Columbus C. Hearne, Samuel H. Dockery, and Samuel R. Hearne, have illegally taken possession of said land, and refuse to give up the same, to his damage $1,000, which he claims, and also prays to be declared the legal owner of said property, and the defendants decreed to deliver the same to him.

The answer of Dockery contains a general denial, and an averment that he and Alfred Dockery purchased from Columbus C. Hearne, on the 8th of January, 1848, the northwest quarter of section nine, in township eighteen, of range sixteen, being a portion of the land claimed by the plaintiff, on which he has put permanent improvements of the value of $400, which he claims as a bona fide possessor in case of eviction.

Columbus C. Hearne, in his answer avers, that his title to the land in controversy is derived from James Bell, the immediate purchaser from the United States; that Robert Smith acquired the title of the latter at a sheriff's sale, under an execution issued on a judgment in favor

of St. John Fabre & Co. against said Bell, and conveyed the same to John N. Howell and Cadwaller Davis, his vendors, whom he has called in warranty. In his answer, Robert Smith, the purchaser under the sheriff's sale, avers that James Bell, from whom he derived his title, was the legal owner of the land in controversy. He also pleads the prescription of ten years.

It appears from the evidence, that the plaintiff and his brother, James Bell, purchased the land in dispute from the United States on the same day, the 3d of July, 1839; and that patent certificates were issued in their respective names by the register of the land office at Natchitoches, Louisiana, bearing the same date and the same number.

On the 3d of April, 1841, this land was seized and sold at sheriff's sale as the property of James Bell, under an execution issued on a judgment against him in favor of St. John Fabre & Co., and Robert Smith became the purchaser thereof. It appears that James Bell, then a resident of this State, pointed out this land for seizure.

On the tenth of July, 1844, a patent was issued in the name of James Bell, and forwarded to the land office at Natchitoches, where it remained until the year 1849, and was then delivered by the register to R. T. Noel, by whom it was forwarded through Mr. L. Hunton, of New Orleans, to the plaintiff at Washington city.

The testimony of Roland Jones shows that he examined the records of the land office at Washington, and found a patent (cancelled) in the name of James Bell, for the land in controversy; and on the same record a patent in the name of John Bell for the same land, of a date some years subsequent. He heard John Bell say "that he had sent James Bell to Louisiana, with money to enter land for him, (John Bell,) and expressed surprise that any land purchased should be in the name of James Bell."

John Wilson, the Commissioner of the General Land Office, testifies that on the tenth of July, 1844, a patent was made out in the name of James Bell, in accordance with the register's returns, and transmitted to the register at Natchitoches, the 12th March following, which patent was in the usual form. He declined giving a copy of it, for the reasons that it had been cancelled, and the record of it was not such a record as contemplated by the act of Congress, approved April 25th, 1812. It appears, he says, that on the 22d of June, 1820, the Hon. John Bell filed a duplicate certificate of the purchase of the register at Natchitoches in his favor for the land in question, upon which a patent in his name was made out for the same land by direction of my predecessor, and transmitted to him on that day, and the patent in the name of James Bell was cancelled. The date of the cancellation is not given in the record. There is no written representation in reference to the matter on file or record in the General Land Office.

The plaintiff, by his own act, having put it beyond the power of the defendants to produce the patent, we do not think the district judge erred in overruling his objection to the admission of parol evidence, which was the best of which the nature of the case admitted.

The reason assigned by the judge appears to us sufficient to sustain his ruling: "Because, from the testimony, it appeared that the patent issued to James Bell had been cancelled and delivered, and that it was competent to show, by parol, the contents of a patent which had been lost, destroyed or cancelled; and further, that it was competent to show fraud by parol, and because the plaintiff was not taken by surprise by the offering of the testimony."

It is clear that the patent of James Bell, as the oldest, must prevail, unless legally cancelled. A patent is the highest evidence of title, and it has been held, the moment it has passed the great seal, it is beyond the power of the General Government. In the case of Lott vs. Prudhomme et al., 3 R. 295, Judge Bullard, as the organ of the court, says: "We do not question the doctrine sanctioned by the Supreme Court of the United States, in the case of Wilcox vs. Jackson, that whenever the question arises, whether the title to property which had belonged to the United States has passed, the question must be resolved by the laws of the United States. But when the property has passed according to those laws, that then the property, like all other in the State, is subject to State legislation, so far as that legislation is consistent with the admission that the title passed and vested according to the laws of the United States. And further, that in an action at law, the patent from the United States for a part of the public lands is conclusive, unless attacked for error or fraud. (13 Peters, 498.) It is true that such patent may be avoided and annulled, for mistake or fraud; but that question, so far as it concerns a *a* citizen of the States, must be solved by our own laws." Applying the doctrine recognised in that case to the present, we think it is clear under the evidence, that the patent of James Bell, under whom the defendants hold, must prevail over that of John Bell.

It is therefore ordered and decreed, that the judgment of the district court be affirmed with costs.

CLERK'S OFFICE,
Supreme Court of Louisiana, at Monroe.

I hereby certify the foregoing to be a true and correct copy of the original opinion and final judgment rendered in the above entitled cause by this court, at the special term for the year 1855.

In testimony whereof, I have hereunto signed my name and [SEAL.] affixed the seal of said court, this 8th day of August, A. D. 1855.

H. M. BRY, *Clerk.*

Application for Writ of Error.

To the honorable Edwin T. Merrick, chief justice of the Supreme Court of the State of Louisiana:

The petition of John Bell, a resident of the city of Nashville, in the State of Tennessee, respectfully represents unto your honor: That on

the 16th day of August, 1853, he filed his petition in the district court of the parish of Caddo, in the State of Louisiana, against Columbus C. Hearne, a resident of the State of Texas, and Samuel H. Dockery, and Samuel R. Hearne, residents of the parish of Caddo, in the State of Louisiana, in which your petitioner claims to be the owner of the following described tract of land, situated in said parish of Caddo, in the State of Louisiana, to wit:

The west half and the southeast quarter of section nine, (9,) in township eighteen, (18,) range sixteen, (16,) in the district of lands subject to sale at Natchitoches, in the State of Louisiana, containing four hundred and seventy-eight and $\frac{80}{100}$ acres, worth three thousand dollars; that he derived title to said land from the Government of the United States of America, by a patent emanating from said Government, dated twenty-second (22) of June, eighteen hundred and fifty, (1850,) signed by Z. Taylor, President of the United States, and Thomas Ewing, jr., Secretary. Which land is in the possession of said Columbus C. Hearne, Samuel H. Dockery, and Samuel R. Hearne.

Petitioner represents, that upon a trial of this case in the district court of the parish of Caddo, in the State of Louisiana, judgment was rendered against him on the 5th day of May, 1855, from which judgment your petitioner presented an appeal to the supreme court of the State of Louisiana, and that on the day of July, 1855, the supreme court aforesaid rendered a final judgment affirming the said judgment of the district court of the parish of Caddo, in said State of Louisiana, which judgment of the said supreme court is a final judgment in the highest court of law or equity of the State of Louisiana.

Petitioner avers that by virtue of said judgment of the district and supreme court of the State of Louisiana, a patent issued by the legal and proper authority of the Government of the United States of America, under which your petitioner claims the land herein above described, has been annulled, avoided, and set aside, and rendered ineffectual by the said State courts of the State of Louisiana, by which judgments and decrees your petitioner will be irreparably injured unless said judgments are annulled and reversed by the Supreme Court of the United States of America.

Wherefore petitioner prays your honor to grant him a writ of error to have said judgments reversed by the Supreme Court of the United States; and that your honor sign and issue a citation to the defendants in error, and fix such bond to be given by petitioner to defendants in error as may be sufficient to answer all such costs as upon an affirmance of the judgment may be adjudged and decreed to the respondent in error, and for all necessary orders to effect the object of this petition.

JOHN RAY,
Att'y for Petitioner.

(Filed August 27, 1855.)

Order granting Writ of Error.

The foregoing petition being considered, it is ordered that a writ of error be allowed in this case, returnable to the Supreme Court of the United States at Washington, upon the executing of his bond by the plaintiff, with good and sufficient , in favor of the defendants, in the sum of five hundred dollars.

August 11, 1855.

EDWIN T. MERRICK,
Chief Justice of the Supreme Court of Louisiana.

Writ of Error.

UNITED STATES OF AMERICA,

The President of the United States, to the honorable the Judges of the Supreme Court of the State of Louisiana, holding sessions at Monroe, in the parish of Ouachita, State of Louisiana, being the western district, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said supreme court before you, between John Bell, a resident of the city of Nashville, in the State of Tennessee, as plaintiff, and Columbus C. Hearne, a resident of the State of Texas, and Samuel H. Dockery and Samuel R. Hearne, residents of the parish of Caddo, in the State of Louisiana, as defendants, a manifest error hath happened to the great damage of the said John Bell, as by his complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and special justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

[SEAL.] Witness the Honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this 27th day of August, in the year of our Lord one thousand eight hundred and fifty-five.

ROBT. J. WILLSON,
Clerk of the United States district court for the western district of the State of Louisiana, with circuit court powers.

Bond for Writ of Error.

Know all men by these presents, that we, John Bell as principal, and John Ray as security, are held and firmly bound unto Columbus

C. Hearne, Samuel H. Dockery and Samuel R. Hearne, in the full and just sum of five hundred dollars, to be paid to the said Columbus C. Hearne, Samuel H. Dockery and Samuel R. Hearne, their certain attorneys, executors, administrators or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents; sealed with our seal, and dated this 27th day of August, in the year of our Lord one thousand eight hundred and fifty-five.

Whereas, lately at a term of the supreme court of the State of Louisiana, holding sessions at the town of Monroe, in the parish of Ouachita in said State, being in the western district of said State, in a suit pending in said supreme court of Louisiana, wherein John Bell was plaintiff, and Columbus C. Hearne, Samuel H. Dockery and Samuel R. Hearne defendants, judgment was rendered against the said John Bell, plaintiff; and said Bell having obtained a writ of error and filed a copy thereof in the clerk's office of the said supreme court of Louisiana, to reverse the judgment in the aforesaid suit, and a citation directed to the said Columbus C. Hearne, Samuel H. Dockery and Samuel R. Hearne, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington the first Monday of December next, 1855.

And the consideration of the above obligation is such, that if the said John Bell shall prosecute his writ to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

JOHN BELL,
By his Attorney, John Ray.
JOHN RAY, *Security.*

Signed and acknowledged in my presence, this 27th day of August, 1855.

H. M. BRY, *Clerk.*

Citation.

United States, to Columbus C. Hearne, Samuel H. Dockery and Samuel R. Kearne, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the first Monday of December (1855) next, pursuant to a writ of error filed the clerk's office of the supreme court of Louisiana, at Monroe, wherein John Bell is plaintiff, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness Edwin T. Merrick, chief justice of the supreme court of the State of Louisiana, this 27th day of August, in the year of our Lord 1855.

EDWIN T. MERRICK,
Chief Justice of the Supreme Court of Louisiana.